

SPECIAL CIVIL APPLICATION NO. 6525 OF 1986.

Date of decision: 2.7.1996

For approval and signature

The Honourable Mr. Justice B. C. Patel

The Honourable Mr. Justice R. R. Jain

Mr. R.P. Bhatt, Senior Advocate with Mr. M.R. Bhatt,
advocate, for petitioners.

Mr. Kamal M. Mehta, A.G.P. for respondent Nos.1 and 2.

Mrs. K.A. Mehta, advocate for respondent No.3.

1. Whether Reporters of Local Papers may be allowed
to see the judgment?yes
2. To be referred to the Reporter or not?No
3. Whether their Lordships wish to see the fair copy
of judgment?No
4. Whether this case involves a substantial question
of law as to the interpretation of the
Constitution of India, 1950 or any order made
thereunder?No
5. Whether it is to be circulated to the Civil
Judge?No

Coram:B.C.Patel & R.R.Jain,JJ.

July 2, 1996.

Oral judgment (Per Patel, J.)

Petitioners, by filing this petition under Articles 226
and 227 of the Constitution of India, have prayed for a
writ, order or direction to the Additional Special Land

Acquisition Officer to redetermine the compensation in respect of the lands acquired in light of provisions of Section 28 A of the Land Acquisition Act (hereinafter referred to as "the Act").

The facts briefly stated are as under:

Petitioner No.1 is a Trust. As averred in the petition, one Shri Acharya Maharajshri Devendraprasadji Vasudev Prasadji Pande was sole Trustee in whose favour certificate of registration was issued. On the sad demise of said Acharya Devendraprasadji in the year 1969, name of petitioner No.2, his son, was entered in the records of the office of the Charity Trust under the Bombay Public Trusts Act. It is averred in the petition that the said Trust was a debtor to the deceased Acharya Devendraprasadji for an amount of Rs.94,985/-. For discharge of the debt, lands of the Trust situated in the sim of village Vadaaj (Naranpura) were sold by deed of conveyance and thus came to be transferred to Acharya Shri Devendraprasadji on 20.9.1952. The said document was registered. It appears that the Charity Commissioner filed Civil Suit No.533 of 1962 in the City Civil Court, Ahmedabad, challenging the said sale and as a consequence thereof under judgment dated 3.5.1978, learned Judge of the City Civil Court, Ahmedabad, declared that the said sale is not binding to the Trust against which First Appeal No.568 of 1978 has been preferred and was pending at the time when the petition was filed. However, thereafter, as averred in the petition, there was a compromise between the parties and as averred in the petition, petitioner No.1 Trust is the sole owner of the lands in question.

The State of Gujarat issued notification under Section 4 of the Act for acquisition of lands for construction of houses, that is, for a scheme for development by Gujarat Housing Board at Vadaaj, Ahmedabad. Thereafter notification under section 6 of the Act was published in accordance with law and Additional Special Land Acquisition Officer made the award on 28.6.1979 awarding different amounts to different owners of the lands covered by notification under Section 6 of the Act. As there is no dispute about the procedure followed by the Additional Special Land Acquisition Officer, we do not make any reference to the proceedings.

From the contents of the application, it is very clear that no application has been made under Section 18 of the Act for making reference to the Court. However, some of the persons whose lands came to be acquired under the

same notification preferred an application for reference. It appears that under Section 19 of the Act, the Collector forwarded the statement to the Court and the Court thereafter redetermined the amount of compensation and passed award. Copy of that award is not placed on the record. In the application we do not find reference as to the date on which the Civil Court, after hearing the parties before it, enhanced the amount of compensation. In the application the petitioners have not annexed copy of their application forwarded to the Collector for redetermination of the amount of compensation on the basis of the award of the Court. Para 11A is added by way of amendment where there is a reference of an application made on 18.12.1986 under Section 28A of the Act. (Section 28A of the Act reads as under:

"28A. Re-determination of the amount of compensation on the basis of the award of the Court.--

(1) Where in an award under this Part, the Court allows to the applicant any amount of compensation in excess of the amount awarded by the Collector under section 11, the persons interested in all the other land covered by the same notification under section 4, sub-section (1) and who are also aggrieved by the award of the Collector may, notwithstanding that they had not made an application to the Collector under section 18, by written application to the Collector within three months from the date of the award of the Court require that the amount of compensation payable to them may be re-determined on the basis of the amount of compensation awarded by the Court:

Provided that in computing the period of three months within which an application to the Collector shall be made under this sub-section, the day on which the award was pronounced and the time requisite for obtaining a copy of the award shall be excluded.

(2) The Collector shall, on receipt of an application under sub-section (1), conduct an inquiry after giving notice to all the persons interested and giving them a reasonable opportunity of being

heard, and make an award determining the amount of compensation payable to the applicants.

- (3) Any person who has not accepted the award under sub-section (2) may, by written application to the Collector, require that the matter be referred by the Collector for the determination of the Court and the provisions of sections 18 to 28 shall, so far as may be, apply to such reference as they apply to a reference under section 18.")

Even for the sake of arguments if we accept the contention raised by Mr. Bhatt that the court declared award after 24.9.1984 yet the grievance made by the petitioners is not required to be entertained in view of the language of Section 28A (1) of the Act. A bare reading of sub-section (1) of Section 28-A would indicate that making of the award by the civil court or judicial officer which becomes the judgment and decree under Section 26 of the Act is the starting point from which the period of limitation is allowed for making an application under Section 28A of the Act. However, the day on which the award was pronounced by the court or the judicial officer and the time requisite for obtaining the certified copy of the award which is a judgment and decree under Section 26 must be excluded. The law of limitation limits the time after which a suit or other proceeding cannot be entertained in a court of justice or before appropriate authority, though it does not affect the substantive rights of the parties. Once the limitation begins to run, it runs its full course until its running is interdicted by an order of the court. In the teeth of the express language in sub-section (1) of section 28A, if limitation of three months once expires in respect of earliest award by efflux of time, application under section 28A (1) cannot be made (See Babua Ram & ors v. State of UP & anr. JT 1994 (7) SC 377).

Thus, language contained in the proviso is very clear and if the application is not submitted within three months from the date of the award of the court, there is no question of considering the application for redetermination on the basis of the amount of compensation awarded by the court. Learned counsel could not point out from the record anything to indicate as to how the application would be within the time prescribed under Section 28A.

It is also held by Full Bench of this Court that the Collector under section 18 of the Act discharges only administrative functions and not judicial functions and he could not have characterized of a court for the purpose of invoking the provisions of Limitation Act 1963 (See Memon Ibrahim v. Officer on Special Duty, XXXV (1) GLR 296).

In view of this clear provisions of Section 28A, application must be made within time prescribed and if it is not so made the petitioners have no right as their remedy is barred by limitation. In view of this, the petition is required to be rejected. Hence, the petition is rejected. Rule discharged. No order as to costs.